



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

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L. Preston Bryant, Jr.
Secretary of Natural Resources

David K. Paylor
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April 20, 2007

Colonel Dionysios Anninos
District Commander
U. S. Army Corps of Engineers
Norfolk District, Fort Norfolk
803 Front Street
Norfolk, Virginia 23510-1096

RE: Section 401 Water Quality Certification for 2007 Nationwide Permit Program

Dear Colonel Anninos:

This is the Commonwealth of Virginia's decision with regard to §401 Water Quality Certification for activities authorized by the U.S. Army Corps of Engineers (USACE) Nationwide Permits (NWP), and Norfolk District Regional Conditions. These NWPs were published in Part II of the *Federal Register* on March 12, 2007, with an effective date of March 19, 2007. The Norfolk District Regional Conditions were public noticed on October 13, 2006. The Commonwealth supports the issuance and use of nationwide and regional permits to expedite the processing of permits while safeguarding the environment and reducing duplication of effort by government regulatory agencies.

Pursuant to Virginia Water Protection (VWP) Permit Regulation 9VAC 25-210-130H, the State Water Control Board is issuing this final §401 Water Quality Certification as meeting the requirements of the VWP regulation after advertising and accepting public comment for 30 days on our intent to provide this certification.

The State Water Control Board hereby provides unconditional §401 Water Quality Certification for all of the Norfolk District Regional Conditions and for the following Nationwide Permits, as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification:

- NWP 1: *Aids to Navigation*
- NWP 2: *Structures in Artificial Canals*

NWP 3: *Maintenance*
NWP 4: *Fish & Wildlife Harvesting, Enhancement, & Attraction Devices & Activities*
NWP 5: *Scientific Measurement Devices*
NWP 6: *Survey Activities*
NWP 8: *Oil and Gas Structures*
NWP 9: *Structures in Fleeting and Anchorage Areas*
NWP 10: *Mooring Buoys*
NWP 11: *Temporary Recreational Structures*
NWP 13: *Bank Stabilization*
NWP 15: *U.S. Coast Guard Approved Bridges*
NWP 20: *Oil Spill Cleanup*
NWP 21: *Surface Coal Mining Activities*
NWP 22: *Removal of Vessels*
NWP 23: *Approved Categorical Exclusions*
NWP 28: *Modifications of Existing Marinas*
NWP 30: *Moist Soil Management for Wildlife*
NWP 31: *Maintenance of Existing Flood Control Facilities*
NWP 33: *Temporary Construction, Access and Dewatering*
NWP 34: *Cranberry Production Activities*
NWP 35: *Maintenance Dredging of Existing Basins*
NWP 36: *Boat Ramps*
NWP 37: *Emergency Watershed Protection and Rehabilitation*
NWP 38: *Cleanup of Hazardous and Toxic Waste*
NWP 41: *Reshaping Drainage Ditches*
NWP 45: *Repair of Uplands Damaged by Discrete Events*
NWP 46: *Discharges Into Ditches*
NWP 47: *Pipeline Safety Program Designated Time Sensitive Inspections & Repairs*
NWP 49: *Coal Re-mining Activities*
NWP 50: *Underground Coal Mining Activities*

Unless otherwise covered under of the Norfolk District State Program General Permit SPGP-01, or other subsequent SPGPs, the State Water Control Board hereby provides §401 Water Quality Certification for the following Nationwide Permits as meeting the requirements of the Virginia Water Protection Permit Regulation, which serves as the Commonwealth's §401 Water Quality Certification provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:5.E:

NWP 14: *Linear Transportation Projects*
NWP 39: *Commercial and Institutional Developments*
NWP 29: *Residential Developments*

The State Water Control Board hereby provides conditional §401 Water Quality Certification for the following Nationwide Permits provided that any compensatory mitigation meets the requirements in the Code of Virginia, Section 62.1-44.15:5E and as detailed below:

NWP 7: *Outfall Structures and Maintenance*, provided that the structure or maintenance are not associated with intake structures

NWP 12: *Utility Line Activities*, provided that the activities are not associated with intake structures or do not transport non-potable raw surface water

NWP 18: *Minor Discharges*, provided that the discharge does not include water withdrawals, such as the construction of an intake structure, weir or water diversion structure

NWP 19: *Minor Dredging*, provided that dredging is not used to create a deep space for water withdrawal

NWP 25: *Structural Discharges*, provided that the discharge does not include structures such as pilings to construct a platform to mount a pump for water withdrawals

NWP 27: *Stream and Wetland Restoration Activities*, provided that : (1) when used to permit a wetland mitigation bank, compensation for any surface water impacts is debited from the bank credits.; (2) natural stream design shall be used for stream restoration projects; (3) monitoring for success of these sites shall be conducted including submittal of as-built plans, surveys, and photographs.

NWP 32: *Completed Enforcement Actions*, provided that the impact does not exceed 2 acres of wetlands or 1500 linear feet of streambed and only past unauthorized impacts are addressed.

NWP 40: *Agricultural Activities*, except for the location of concentrated animal feeding operations or waste storage facilities in surface waters.

NWP 42: *Recreational Facilities*, provided that: (1) the facility does not include an impoundment for irrigation; (2) compensation is required for wetland and/or stream loss due to direct impacts and permanent backflooding.

NWP 43: *Stormwater Management Facilities*, provided that the facility is not associated with a water withdrawal

NWP 44: *Mining Activities*, provided that the activity is not for hydraulic dredging

NWP 48: *Commercial Shellfish Aquaculture Activities*, provided that the activity complies with the conditions of any VPDES permit issued for the facility

The following Nationwide Permit is not currently applicable in the Commonwealth and therefore does not require §401 Certification:

NWP 24: *Indian Tribe or State Administered Section 404 Programs*

The State Water Control Board denies §401 Water Quality Certification for the following Nationwide Permits, as these types of projects require individual review under state laws:

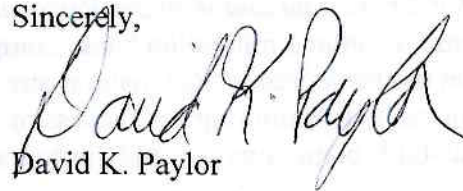
NWP 16: *Return Water from Upland Contained Disposal Sites*

NWP 17: *Hydropower Projects*

As to the exceptions for activities that would otherwise qualify for one of these Nationwide Permits, the State will continue to process applications for individual §401 Certification through a Virginia Water Protection General or Individual Permit pursuant to 9VAC 25-210-10 et seq. To accomplish our goal of individual review of certain activities, the Commonwealth is requesting that the Corps forward to the Department of Environmental Quality pre-construction notifications for any activities that fall into an excepted category.

Thank you for your continuing cooperation in the administration of the Joint Permit Program.

Sincerely,

A handwritten signature in black ink, appearing to read "David K. Paylor", written over a light blue horizontal line.

David K. Paylor

cc: The Honorable L. Preston Bryant, Jr.,
Secretary of Natural Resources
Steven G. Bowman, Commissioner,
Virginia Marine Resource Commission